

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Steve Currid
Application No.: 10/089,587
PCT Application No.: PCT/GB97/03351
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Art Unit: Not Yet Assigned
Attorney Docket No.: 232.7548USU

Box PCT
Assistant Commissioner for Patents
Washington, D.C. 20231

Attention: PCT Legal Office

SECOND RENEWED PETITION UNDER 37 CFR 1.137(b)

This Second Renewed Petition Under 37 CFR 1.137(b) is in response to the Decision, dated 05 June 2003, which was in response to Applicant's Renewed Petition Under 37 CFR 1.137(b), which was filed on 11 April 2003.

Applicant's Renewed Petition Under 37 CFR 1.137(b) was filed in response to the Decision of 25 October 2002 in response to applicant's "Petition For Revival of Patent Application abandoned unintentionally Under 37 CFR 1.137(b)", which was filed on 29 March 2002.

The Decision of 25 October 2002 stated that a Petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required). The petition decision acknowledged that the Applicant has satisfied the requirements as stated in Items (1), (2), and (4). Applicant's petition was dismissed due to failure to satisfy the requirement as stated in Item (3).

The Decision of 05 June 2003 stated that Applicant's original petition was dismissed in part because eight months elapsed between the discovery that applicant had not entered the national stage in the United States and the filing of applicant's original petition to revive. The Decision of 05 June 2003 acknowledged that the declaration of Mr. Terence Reddick provided a sufficient explanation of the delay.

The Decision of 05 June 2003 further stated that the original petition was also dismissed because certain statements in the declaration of Mr. Raymond Doughty appeared to indicate that the decision not to enter the United States national stage in a timely manner was an intentional business decision altered only after a 28 July 2001 meeting between Mr. Doughty and Mr. Currid. The Decision of 05 June 2003 also stated that the declaration of Mr. Reddick was silent on this issue as it only explains actions taken after Mr. Reddick's 05 November 2001 meeting with Mr. Doughty.

The Decision of 05 June 2003 further stated that applicant must provide an explanation, which further details the decision-making that resulted in certain national stages being entered in a timely fashion on 04 June 1999 and which shows that the lack of timely entry into the United States was truly unintentional and not a calculated business decision.

Please consider the following additional verified statement:

The entire delay in filing the U.S. Basic National Fee from the due date of June 4, 1999 until the filing of this petition pursuant to 37 CFR 1.137(b) was unintentional.

The attached declarations of Raymond William Doughty and Stephan Currid show that Mr. Doughty and Mr. Gale discussed the filing of national stage applications in Europe, the Middle East and Australasia in January 1999, that Mr. Gale and Mr. Currid agreed in May 1999 to include the United States in the national stage filings, that Mr. Currid assumed that Mr. Gale would convey the decision to Mr. Doughty, that subsequently in May 1999, Mr. Gale informed Mr. Doughty that the national phase should be entered in the "previously agreed" countries, which Mr. Doughty unintentionally took to mean the countries that he discussed with Mr. Gale in January 1999.

It is respectfully submitted that these declarations provide an explanation that further details the decision-making, which resulted in certain national stages being entered in a timely fashion and that the lack of timely entry into the United States was truly unintentional and not a calculated business decision.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Applicant respectfully requests that this Second Renewed Petition Under
37 CFR 1.137(b) be granted.

October 1, 2003
Date

Paul D. Greeley

Paul D. Greeley, Esq.
Attorney for Applicant(s)
Registration No. 31,019
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
One Landmark Square, 10th Floor
Stamford, Connecticut 06901-2682
Telephone: (203) 327-4500
Telefax: (203) 327-6401

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Certificate No. EL 99676 9168 service under 37 CFR §1.10 and is addressed to: Box PCT, Commissioner for Patents, Washington, D.C. 20231, Att: PCT Legal Office on October 1, 2003.

Teresa Donah Recupero
(Typed name of person mailing paper)

Teresa Donah Recupero
(Signature of person mailing paper)

Document : 946285

DECLARATION

I Raymond William Doughty of 12 Manor Rise, Boley Park, Litchfield WS14 9SL, United Kingdom

do hereby solemnly and sincerely declare as follows:

I have reviewed the Decision on Renewed Petition under 37 CFR 1.37(b) of June 5, 2003, and, in particular, the discussion on page 2, first full paragraph. I believe that my earlier Declaration of March 4, 2002 has left an inaccurate impression upon the United States Patent and Trademark Office which has, in my opinion, led to the Decision dismissing Applicant's Renewed Petition under 37 CFR 1.37(b). In particular, the Decision incorrectly concluded that "Applicant has not provided any further evidence to show that the decision made by Mr. Doughty not to file in the national stage in the United States was anything other than a deliberate action on behalf of the corporation."

Pursuant to the request issued on page 2 of the Decision, I hereby provide an explanation further detailing the decision-making which resulted in certain national stages being entered in a timely fashion on 04 June 1999 which shows that the lack of timely entry into the United States was truly unintentional and not a calculated business decision.

In my March 4, 2002 Declaration I stated that "Following a discussion that I had with Mr. Currid (who by then had been promoted to the position of Technical Director of Hepworth Plumbing) during May 1999, I decided that the PCT application should enter the national phase on the basis of a previous discussion that I had had with Mr. Gale (who by then had been promoted to the position of Managing Director of Hepworth Plumbing) in January 1999."

The confusion which resulted in Applicant's untimely filing of the U.S. National Phase application relates back to the above quoted statement from my earlier Declaration, i.e., "I decided that the PCT application should enter the national phase on the basis of a previous discussion that I had had with Mr Gale." As will be discussed hereafter, I had two discussions

with Mr. Gale on this matter which directly resulted in Applicant's untimely filing of the National Phase Application in the USA.

During my January 1999 conversation with Mr. Gale, we discussed the filing of National Phase applications based off of our PCT application in Europe, the Middle East and Australasia.

In May 1999, I conducted a conversation with Mr. Currid regarding the same issue of where to file National Phase applications based on the PCT Application. Mr. Currid and I agreed that I would confirm the final list of countries with Mr. Gale.

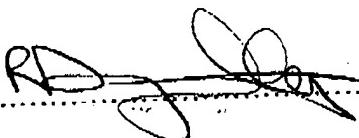
Prior to my conversation with Mr. Gale, Messrs. Currid and Gale held an intervening conversation on this very topic. During that conversation it was agreed that Applicant would also file a National Phase application in the USA, hence the Chapter II National Phase country list was to include the following countries: USA, Europe, the Middle East and Australasia. This conversation was not reported to me during our National Phase deliberation process.

Pursuant to my prior agreement with Mr. Currid, I undertook to have a follow-up conversation with Mr. Gale in May 1999. During that conversation, Mr. Gale confirmed that the national phase should be entered in the "previously agreed" countries. I unintentionally mistook this to mean the list of countries originally discussed between Mr. Gale and myself in January 1999, i.e., Europe, the Middle East and Australasia. However, what Mr. Gale must have intended was that the "previously agreed" countries, were those countries discussed between Messrs. Gale and Currid, i.e., USA, Europe, the Middle East and Australasia, not those countries which were discussed during Mr. Gale's and my first conversation on the issue in January 1999. I believe that the confusion arose, without any fault to anyone, because Mr. Currid assumed that Mr. Gale would inform me of their prior joint decision to include the USA in the National Phase filings. Since Mr. Gale did not provide me the revised listing of countries agreed to by he and Mr. Currid, nor did he specifically inform me of he and Mr. Currid's decision to add the USA to our final list of National Phase countries, I incorrectly assumed that the "previously agreed" upon list of countries referred to by Mr. Gale was the list of countries originally discussed by Mr. Gale and I in January 1999, not the final list of countries "previously agreed" upon by Messrs. Currid and Gale.

DECLARATION STATEMENT

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such wilful false statements may jeopardize the validity of the application or any patent issued thereon.

Subscribed this 19 TH day of SEPTEMBER 2003.

A handwritten signature consisting of stylized initials "R" and "D" followed by a surname, written in black ink.

Document: 946310

DECLARATION

I Stephen Currid of 4 Mill Road, Meltham, Holmfirth, United Kingdom

do hereby solemnly and sincerely declare as follows:

I have reviewed the Decision on the Renewed Petition under 37 CFR 1.37(b) of June 5th, 2003 and, in particular, the discussion on page 2, first full paragraph. I believe that my earlier declaration of 7th March 2002 has left an inaccurate impression upon the United States Patent and Trademark Office which has, in my opinion, led to the Decision dismissing Applicant's Renewed Petition under 37 CFR 1.37(b). In particular, the Decision incorrectly concluded that "Applicant has not provided any further evidence to show that the decision made by Mr Doughty not to file in the national stage in the United States was anything other than a deliberate action on behalf of the corporation."

Pursuant to the request issued on page 2 of the Decision, I hereby provide an explanation further detailing the decision-making which resulted in certain national stages being entered in a timely fashion on 4th June 1999, which shows that the lack of timely entry into the United States was truly unintentional and not a calculated business decision.

In my March 7th, 2002 declaration, I stated that "I was aware of a need to determine countries in which the PCT application should enter the national phase before a date in June 1999. However, work commitments prevented a meeting between me, Mr Doughty and the other relevant Hepworth Plumbing personnel prior to that deadline. This did not concern me greatly, because I knew that Mr Doughty would discuss the matter with Mr Gale, who had become our managing director by that time." This statement was intended to explain that Mr Doughty, the other relevant personnel (particularly Mr Gale) and me did not manage to meet simultaneously. In fact, I did meet with Mr Gale during May 1999 and we decided to include the USA in the national phase filings and hence concluded that the Chapter II national phase country list was to include the following countries: USA, Europe, the Middle East and Australasia.

It was my impression that Mr Gale would convey our decision to Mr Doughty and I did not, therefore, seek to arrange a formal meeting with Mr Doughty. Despite this, I did subsequently

discuss the matter very briefly with Mr Doughty whilst passing in a corridor in May 1999. Due to the unplanned nature of our conversation, I did not explain the outcome of my meeting with Mr Gale to Mr Doughty. I did, however, inform Mr Doughty that he should speak to Mr Gale in order to confirm the final list of countries.

DECLARATION STATEMENT

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such wilful false statements may jeopardize the validity of the application or any patent issued thereon.

Subscribed this 19th day of SEPTEMBER 2003.

